

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1655, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 3, line 7, reset in roman "two".
- 2 Page 3, line 7, delete "three".
- 3 Page 3, line 7, reset in roman "(\$200);"
- 4 Page 3, delete line 8.
- 5 Page 4, between lines 15 and 16, begin a new paragraph and insert:
- 6 "SECTION 3. IC 23-2-5-10, AS AMENDED BY P.L.14-2000,
- 7 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the**
- 9 **commissioner that a person has engaged in or is about to engage in**
- 10 **an act or a practice constituting a violation of this chapter or a rule**
- 11 **adopted or an order issued under this chapter, the commissioner**
- 12 **may investigate and may issue:**
- 13 (1) **with a prior hearing if there exists no substantial threat of**
- 14 **immediate irreparable harm; or**
- 15 (2) **without a prior hearing if there exists a substantial threat**
- 16 **of immediate irreparable harm;**
- 17 **orders and notices the commissioner determines to be in the public**
- 18 **interest, including cease and desist orders, orders to show cause,**
- 19 **and notices. After notice and hearing, the commissioner may enter**
- 20 **an order of rescission, restitution, or disgorgement, including**
- 21 **interest at the rate of eight percent (8%) per year, directed to a**

1 **person who has violated this chapter or a rule or order under this**
 2 **chapter.**

3 **(b) Upon the issuance of an order or notice without a prior**
 4 **hearing by the commissioner under subsection (a)(2), the**
 5 **commissioner shall promptly notify the respondent:**

- 6 **(1) that the order or notice has been issued;**
- 7 **(2) of the reasons the order or notice has been issued; and**
- 8 **(3) that upon the receipt of a written request the matter will**
 9 **be set down for a hearing to commence within forty-five (45)**
 10 **business days after receipt of the request unless the**
 11 **respondent consents to a later date.**

12 **If a hearing is not requested and not ordered by the commissioner,**
 13 **an order remains in effect until it is modified or vacated by the**
 14 **commissioner. If a hearing is requested or ordered, the**
 15 **commissioner, after notice of an opportunity for hearing, may**
 16 **modify or vacate the order or extend it until final determination.**

17 **(c) The commissioner may deny, suspend, or revoke the license of**
 18 **a licensee or the registration of a registrant if the licensee or the**
 19 **registrant:**

- 20 **(1) fails to maintain the bond required under section 5 of this**
 21 **chapter;**
- 22 **(2) is insolvent;**
- 23 **(3) has violated any provision of this chapter;**
- 24 **(4) has knowingly filed with the commissioner any document or**
 25 **statement containing any false representation of a material fact or**
 26 **omitting to state a material fact or if a representation becomes**
 27 **false after the filing but during the term of a license or certificate**
 28 **of registration as provided in subsection ~~(e)~~; (g); or**
- 29 **(5) has been convicted, within ten (10) years before the date of the**
 30 **application, renewal, or review, of any crime involving fraud or**
 31 **deceit.**

32 **~~(b)~~ (d) The commissioner may not enter a final order denying,**
 33 **suspending, or revoking the license of a licensee or the registration of**
 34 **a registrant without prior notice to all interested parties, opportunity for**
 35 **a hearing, and written findings of fact and conclusions of law.**
 36 **However, the commissioner may by summary order deny, suspend, or**
 37 **revoke a license or certificate of registration pending final**
 38 **determination of any proceeding under this section. Upon the entry of**
 39 **a summary order, the commissioner shall promptly notify all interested**
 40 **parties that it has been entered, of the reasons for the summary order,**
 41 **and that upon receipt by the commissioner of a written request from a**
 42 **party, the matter will be set for hearing to commence within fifteen**

(15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ (e) IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ (f) If:

(1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or

(2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within fifteen (15) days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

~~(e)~~ (g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement."

Page 5, delete lines 16 through 42, begin a new paragraph and insert:

"SECTION 4. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

ARTICLE 4.8. INDIANA FAIR LENDING ACT

Chapter 1. Consumer Protections

Sec. 1. (a) Except as provided in subsection (c), this article does not apply to a bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes, preempts, or has been determined to

preclude or preempt this article to a federally chartered bank, trust company, savings and loan, savings bank, or credit union.

(b) Any federal preclusion or preemption under subsection (a) applies to a state chartered entity only as it applies to the same type of federally chartered entity.

(c) The requirements of this article apply to a mortgage broker who originates or brokers a loan that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.

Sec. 2. (a) The definitions in this section apply throughout this article.

(b) "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity, as determined under the Federal Bank Holding Company Act (12 U.S.C. 1841 et. seq.), as amended. The term does not include an entity whose predominant business is providing tax deferred defined contribution pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

(c) "Bona fide discount points" means loan discount points that:

- (1) are knowingly paid by the borrower or on behalf of the borrower;
- (2) are paid for the express purpose of lowering the interest rate; and
- (3) in fact result in a bona fide reduction of the interest rate or time-price differential applicable to the loan.

The amount of interest rate reduction purchased by the discount points must be reasonably consistent with established norms and practices for mortgage market transactions.

(d) "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

(e) "Covered loan" means a consumer credit mortgage loan transaction other than an open end credit plan or a reverse mortgage in which:

- (1) the borrower is a natural person;
- (2) the debt is incurred by the obligor primarily for personal, family, or household purposes;
- (3) the loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the obligor as the obligor's principal

dwelling; and

(4) the terms of the loan provide:

(A) that the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24)) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 1602(aa) and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32; or

(B) for total points and fees payable by the borrower at or before the loan closing, exceed six percent (6%) of the total loan amount.

(f) "Lender" means any individual or entity that in any twelve (12) month period originates one (1) or more covered loans. The individual or entity to which the covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, is considered to be the lender.

(g) "Mortgage broker" means a person, except for an employee or exclusive agent of a lender, who, for compensation, brings an obligor and a lender together to obtain a covered loan.

(h) "Municipality" means a county, city, town, or township.

(i) "Ninety (90) day period" means the period beginning on the day notice is provided under section 3 of this chapter and ending ninety (90) days later.

(j) "Obligor" means each obligor, co-obligor, cosigner, or guarantor obligated to repay a covered loan.

(k) "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

(l) "Servicer" has the same meaning provided in Section 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et. seq., as amended.

(m) "Total points and fees payable by the borrower at or before the loan closing" means points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004). However, total points and fees payable by the borrower at or before closing excludes not more than two (2) bona fide discount points.

Sec. 3. A covered loan is subject to the following limitations:

(1) A covered loan may not require a scheduled payment that

1 is more than twice as large as the average of earlier scheduled
2 monthly payments unless the a payment becomes due and
3 payable at least one hundred twenty (120) months after the
4 date of the loan. This prohibition does not apply when the
5 payment schedule is adjusted to account for the seasonal or
6 irregular income of the obligor or if the loan is a bridge loan
7 connected with or related to the acquisition or construction of
8 a dwelling intended to become the obligor's principal
9 dwelling.

10 (2) A covered loan may not contain a call provision that
11 permits the lender, in the lender's sole discretion, to
12 accelerate the indebtedness. This prohibition does not apply
13 when repayment of the loan has been accelerated:

14 (A) by default;

15 (B) under a due on sale provision;

16 (C) where there is fraud or material misrepresentation by
17 an obligor in connection with the loan; or

18 (D) where there is any action or inaction by the obligor
19 that adversely affects the lender's security for the loan or
20 any rights of the lender in the security for the loan.

21 (3) A covered loan may not require a payment schedule with
22 regular periodic payments that cause the principal balance to
23 increase. This does not prohibit negative amortization as a
24 consequence of a temporary forbearance or restructure
25 sought by the obligor.

26 (4) A covered loan may not require any increase in the
27 interest rate as a result of a default. This provision does not
28 apply to periodic interest rate changes in a variable rate loan
29 otherwise consistent with the loan agreement, provided the
30 change in the interest rate is not occasioned by the default or
31 a permissible acceleration of the indebtedness.

32 (5) A covered loan may not include terms under which more
33 than two (2) periodic payments required under the loan are
34 paid in advance from the loan proceeds provided to the
35 obligor.

36 (6) Prepayment fees are subject to the following limitations:

37 (A) A prepayment fee or penalty is permitted only during
38 the first twenty-four (24) months after the date of
39 execution of a covered loan.

40 (B) A lender may not include a prepayment penalty fee in
41 a covered loan unless the lender offers the obligor the
42 option of choosing a loan product without a prepayment

1 fee. The terms of the offer must be in writing and initialed
2 by the borrower. The offer must be clearly labeled in large
3 bold type and must include the following disclosure:

4 **"LOAN PRODUCT CHOICE**

5 I was provided with an offer to accept a product both
6 with and without a prepayment penalty provision. I have
7 chosen to accept the product with a prepayment
8 penalty."

9 (C) A prepayment fee or penalty may not be charged on a
10 refinancing of a covered loan if the covered loan being
11 refinanced is owned by the refinancing lender at the time
12 of the refinancing.

13 (D) A prepayment fee or penalty may not exceed two
14 percent (2%) of the net unpaid balance as of the date of the
15 prepayment.

16 (7) A lender shall not make a covered loan subject to a
17 mandatory arbitration clause if the clause is oppressive,
18 unfair, unconscionable, or substantially in derogation of the
19 rights of the obligor. It is presumed that an arbitration clause
20 that complies with the standards of the statement of principles
21 of the National Consumer Dispute Advisory Committee of the
22 American Arbitration Association in effect on July 1, 2003
23 does not violate this subdivision.

24 **Sec. 4. (a) A lender may not make a covered loan unless the**
25 **lender or a mortgage broker has given the following notice (or a**
26 **substantially similar notice) in writing to the obligor within a**
27 **reasonable time of determining that the loan would result in a**
28 **covered loan but not later than the time the notice is required**
29 **under the notice provision contained in 12 CFR 226.31(c), as**
30 **amended.**

31 **"CONSUMER CAUTION AND HOME OWNERSHIP**
32 **COUNSELING NOTICE**

33 If you obtain this loan, the lender will have a mortgage on
34 your home. You could lose your home and any money you
35 have put into it if you do not meet your obligations under the
36 loan. Mortgage loan rates and closing costs and fees vary
37 based on many factors, including your particular credit
38 history and financial circumstances, your earnings history,
39 the amount of your home's value that you wish to borrow, and
40 the type of property that will secure your loan. The loan rate
41 and fees could also vary based on which lender or mortgage
42 broker you select.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender for information on contacting the Indiana housing finance authority established under IC 5-20-1-3 or call the United States Department of Housing and Urban Development's counseling hotline at _____ (insert telephone number) or go to _____ (insert web address) for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you also should remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

(b) A lender or mortgage broker has met its obligation to provide the disclosure described in subsection (a) if the consumer provides the lender or mortgage broker with a signed acknowledgment of receipt of a copy of the notice set forth in subsection (a).

(c) A lender who originates a covered loan may not extend credit to an obligor based on the obligor's collateral without regard to the obligor's ability to repay, including the obligor's current or expected income, current obligations, and employment.

(d) A lender will be presumed to have violated subsection (c) if the lender makes a covered loan without verifying or documenting the obligor's repayment ability.

(e) Any expected income from any source other than the obligor's equity in the property securing the covered loan,

1 including regular salary or wages, gifts, expected retirement
2 payments, or income from self employment may be considered
3 when evaluating the obligor's ability to repay. A lender may verify
4 and document an obligor's income and current obligations through
5 any reliable source that provides the lender with a reasonable basis
6 for believing there are sufficient funds to support the covered loan.
7 Reliable sources include, but are not limited to, credit reports, tax
8 returns, pension statements, and payment records for employment
9 income.

10 (f) In the case of a loan based on the borrower's statement of the
11 borrower's income, the reasonable basis for believing there are
12 sufficient funds to support the covered loan may be the income
13 stated by the consumer, as well as other information in the
14 possession of the person originating the loan after the solicitation
15 of all information that the person customarily solicits in connection
16 with loans of that type. A lender may not knowingly or willfully
17 originate a covered loan as a loan based on the borrower's
18 statement of the borrower's income with the intent to evade this
19 subsection.

20 (g) A lender may not, within two (2) years after having made a
21 covered loan, charge an obligor points or fees in connection with
22 the covered loan if the proceeds of the covered loan are used to
23 refinance an existing covered loan for which points and fees were
24 charged. However, points and fees may be charged on any
25 proceeds of a covered loan that are in excess of the amount
26 refinanced on the existing covered loan.

27 (h) A lender may not finance, directly or indirectly, into a
28 covered loan or finance to the same obligor within thirty (30) days
29 of making a covered loan, any individual or group credit life, credit
30 accident and health, credit disability, or credit unemployment
31 insurance product on a prepaid single premium basis sold in
32 conjunction with a covered loan. Any individual or group credit
33 life, credit accident and health, credit disability, or credit
34 unemployment insurance premium calculated and paid on a
35 monthly or other periodic basis may not be considered financed by
36 the lender. This prohibition does not include contracts issued by a
37 government agency or private mortgage insurance company to
38 insure the lender against loss caused by an obligor's default.

39 (i) A lender may not replace or consolidate a zero (0) interest
40 rate or other subsidized low rate loan made by a governmental or
41 nonprofit lender with a covered loan within the first ten (10) years
42 of the subsidized low rate loan unless the current holder of the loan

1 consents in writing to the refinancing. For purposes of this
2 subsection, a "subsidized low rate loan" is a loan that carries a
3 current interest rate at least two (2) percentage points below the
4 current yield on treasury securities with a comparable maturity.
5 If the loan's current interest rate is either a discounted
6 introductory rate or a rate that automatically steps up over time,
7 the fully indexed rate or the fully stepped up rate, as appropriate,
8 should be used instead of the current rate to determine whether a
9 loan is a subsidized low rate loan.

10 (j) A lender may not pay a contractor under a home
11 improvement contract from the proceeds of a covered loan other
12 than by an instrument payable to the obligor or jointly to the
13 obligor and the contractor or, at the election of the obligor,
14 through a third party escrow agent in accordance with terms
15 established in a written agreement signed by the obligor, the
16 lender, and the contractor before the disbursement of funds to the
17 contractor.

18 (k) A lender may not recommend or encourage default on an
19 existing loan or other debt before or in connection with the closing
20 or planned closing of a covered loan that refinances all or any part
21 of the existing loan or debt.

22 (l) A lender may not charge a fee for informing or transmitting
23 to a person the balance due to pay off a covered loan or to provide
24 release upon prepayment. A lender must provide a payoff balance
25 not later than seven (7) business days after the request is received
26 by the lender.

27 (m) A lender may not charge an obligor fees or other charges to
28 modify, renew, extend, or amend a covered loan or to defer any
29 payment due under the terms of a covered loan.

30 (n) A person may not knowingly and intentionally make,
31 propose, or solicit fraudulent, false, or misleading statements on
32 any mortgage document or any document related to a mortgage,
33 including a mortgage application, real estate appraisal, or real
34 estate settlement or closing document. For purposes of this
35 subsection, "fraudulent, false, or misleading statements" does not
36 include mathematical errors, inadvertent transposition of
37 numbers, typographical errors, or any other bona fide error.

38 (o) Except as provided in IC 24-4.5-3-203.5, a lender may not
39 charge a late payment fee on a covered loan.

40 (p) A lender may not knowingly or intentionally structure or
41 restructure a closed-end covered loan as an open-end credit
42 transaction for the purpose of evading the requirements of this

1 article.

2 (q) A lender may not knowingly or intentionally divide a
3 covered loan into separate parts for the purpose of evading the
4 requirements of this article.

5 Sec. 5. A servicer of a covered loan shall report at least
6 quarterly both the favorable and unfavorable payment history
7 information of the obligor on payments due to the lender on a
8 covered loan to a nationally recognized consumer credit reporting
9 agency. This subsection does not prevent a servicer from agreeing
10 with the obligor not to report specified payment history
11 information in the event of a resolved or unresolved dispute with
12 an obligor and does not apply to covered loans held or serviced by
13 a lender for less than ninety (90) days.

14 Sec. 6. A lender making a covered loan that has the right to
15 foreclose must use the judicial foreclosure procedures of the state
16 in which the property securing the loan is located. The obligor has
17 the right to assert in the proceeding the nonexistence of a default
18 and any other claim or defense to acceleration and foreclosure,
19 including a claim or defense based on a violation of this article.
20 Nothing in this section is intended or shall be construed to allow
21 any claim or defense otherwise barred by any statute of limitation
22 or repose.

23 Sec. 7. A lender may not discriminate against an applicant with
24 respect to any aspect of a credit transaction on the basis of race,
25 color, religion, national origin, sex or marital status, or age,
26 provided that the applicant has the ability to contract.

27 Chapter 2. Enforcement and Mortgage Fraud Unit

28 Sec. 1. (a) The attorney general may enforce this article for any
29 violation occurring within five (5) years after the making of the
30 covered loan.

31 (b) As used in this chapter, "appropriate restitution" means the
32 reimbursement by the lender of any points, fees, interest, or other
33 payments that were made to the lender from the obligor and which
34 are necessary to restore the obligor to the same position as the
35 obligor would have been in had the loan originally been made
36 according to the adjusted terms of section 7 of this chapter.

37 (c) As used in this chapter, "fraud" means an act or practice as
38 part of a consumer credit mortgage transaction involving real
39 property located in Indiana in which a lender:

40 (1) knowingly or intentionally makes a material
41 misrepresentation to a borrower;

42 (2) knowingly or intentionally conceals or obscures material

1 information from the borrower regarding the terms or
2 conditions of the transaction;

3 (3) knowingly or intentionally consummates the credit
4 mortgage transaction with the knowledge that the borrower
5 will be unable to successfully fulfill the terms or conditions of
6 the mortgage loan based upon the borrower's finances at the
7 time of the consummation;

8 (4) knowingly or intentionally includes terms or conditions in
9 the mortgage loan that substantially increase the likelihood of
10 default; or

11 (5) violates this article.

12 The applicable provisions of this section also apply to a mortgage
13 broker or real estate appraiser who assists in or is a part of the
14 consumer credit mortgage transaction.

15 (d) As used in this chapter, "unit" refers to the mortgage fraud
16 unit established by this section.

17 (e) The mortgage fraud unit is established in the office of the
18 attorney general.

19 (f) The attorney general shall hire qualified individuals to
20 implement the responsibilities of the unit, subject to the budget
21 agency's approval.

22 (g) The unit shall do the following:

23 (1) Investigate allegations of fraud in connection with
24 mortgage loans.

25 (2) Institute appropriate administrative and civil actions to
26 redress fraud in connection with mortgage loans.

27 (3) Cooperate with federal, state, and local law enforcement
28 agencies in the investigation of fraud in connection with
29 mortgage loans.

30 (4) Cooperate with appropriate federal and state agencies in
31 the prosecution of criminal violations involving fraud in
32 connection with mortgage loans.

33 (h) The unit shall cooperate with the following to implement this
34 chapter:

35 (1) The Indiana professional licensing agency and the
36 appropriate licensing boards with respect to persons licensed
37 under IC 25.

38 (2) The department of financial institutions.

39 (3) The department of insurance with respect to the sale of
40 insurance in connection with mortgage lending.

41 (4) The securities division of the office of the secretary of
42 state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

Sec. 2. The attorney general may file complaints with any of the agencies listed in section 1(f) of this chapter to implement this chapter.

Sec. 3. The establishment of the unit and its powers does not limit the jurisdiction of any agency described in section 1(f) of this chapter.

Sec. 4. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of any person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 5. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

(1) issue an injunction;

(2) order a person to make restitution;

(3) void or limit the application of obligations that violate this article;

(4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

(5) impose a civil penalty of not more than two thousand dollars (\$2,000) per violation.

Sec. 6. (a) A person who violates an injunction issued under section 5 of this chapter must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(b) The court that issues an injunction under section 5 of this

chapter retains jurisdiction over a proceeding seeking imposition of a civil penalty under this section.

(c) The attorney general, acting in the name of the state, has the exclusive right to petition for imposition of a civil penalty under this section.

(d) If a court determines that a person:

(1) has violated an injunction issued under section 5 of this chapter; and

(2) must pay a civil penalty;

the court shall also require the person to reimburse the state for reasonable costs related to bringing an action under this section.

Sec. 7. A lender of a covered loan who in good faith fails to comply with the requirements of IC 24-4.8-1 does not violate this article if:

(1) not later than sixty (60) days after the loan closing the obligor is notified of the lender's failure to comply with the requirements of IC 24-4.8-1. The lender must make appropriate restitution to the obligor, and the terms of the loan must be adjusted, at the choice of the obligor, so that the loan:

(A) complies with the requirements of IC 24-4.8-1; or

(B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor; or

(2) the failure to comply was unintentional and resulted from an error notwithstanding the maintenance of procedures reasonably adopted to avoid noncompliance. The lender shall, not later than sixty (60) days after the discovery of noncompliance, notify the obligor of the noncompliance, make appropriate restitution to the obligor, and adjust the terms of the loan, at the choice of the obligor, so that the loan:

(A) complies with the requirements of IC 24-4.8-1; or

(B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor.

Sec. 8. (a) If a person suffers a pecuniary loss as a result of a violation of this article, the person may bring a civil action for the following:

(1) Actual damages.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(b) An action under this section may not be brought,

commenced, or maintained unless the action is filed within five (5) years after the date the person knew or by the exercise of reasonable diligence should have known of the violation of this article.

(c) An award of actual damages under subsection (a)(1) has priority over a civil penalty imposed under this chapter.

Chapter 3. State Power to Regulate Lending

Sec. 1. (a) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(b) Political subdivisions may not enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(1) are subject to the jurisdiction of the department of financial institutions;

(2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);

(4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) are created by the Indiana housing finance authority.

Chapter 4. Revenue and Appropriations

Sec. 1. The fees assessed by the county recorder to record a mortgage are increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. The revenue from this fee increase shall be distributed as

1 follows:

2 (1) Fifty percent (50%) to the attorney general for use in
3 mortgage fraud enforcement under section 3 of this chapter.

4 (2) Fifty percent (50%) to the Indiana housing finance
5 authority under IC 5-20-1-3 for mortgage literacy training
6 and programs under section 2 of this chapter.

7 Sec. 2. The fee allocation under section 1(2) of this chapter shall
8 be distributed on a quarterly basis to the Indiana housing finance
9 authority for the purpose of identifying, promoting, and funding
10 mortgage literacy training and programs throughout the state.
11 Such training and programs shall cover topics that include home
12 buying and mortgage lending.

13 Sec. 3. The fee allocation under section 1(1) of this chapter shall
14 be distributed on a quarterly basis to the mortgage fraud unit
15 created within the office of the attorney general by
16 IC 24-4.8-2-1(c).

17 Sec. 4. (a) An allocation of seventy-five thousand dollars
18 (\$75,000) consisting of the increased fees under this chapter shall
19 be made to the legislative services agency before any fee revenue
20 may be allocated to the mortgage fraud unit of the attorney
21 general's office or the department of education. The seventy-five
22 thousand dollar (\$75,000) allocation shall be used to contract with
23 the Kelly School of Business at Indiana University to conduct a
24 study of the causes of the high rate of foreclosure in Indiana during
25 2001 and 2002.

26 (b) The results of the study shall be reported in writing to the
27 legislative services agency not later than December 31, 2004. The
28 legislative services agency shall distribute the report to the
29 legislative council, the department of financial institutions, and the
30 attorney general.

31 Chapter 5. Assignee Liability

32 Sec. 1. (a) Except as provided in subsection (b), a person who
33 purchases or who is assigned a covered loan from a lender is
34 subject to the same claims and entitled to the same defenses as the
35 lender.

36 (b) If an action is commenced:

37 (1) by the mortgage fraud unit; or

38 (2) by an individual under IC 24-4.8-2-8;

39 alleging the covered loan does not meet the requirements of
40 IC 24-4.8-1, the person may not be held liable for violations of this
41 article if the person establishes by a preponderance of the evidence
42 that a reasonable person exercising ordinary due diligence could

1 not have determined at the time the covered loan was purchased or
2 assigned that the covered loan violated this article.

3 **Sec. 2. If it is determined that a person who purchases or who**
4 **is assigned a covered loan is liable for civil penalties or amounts**
5 **under IC 24-4.8-2-8, the total amount of liability may not exceed**
6 **the:**

- 7 (1) remaining amount of obligor indebtedness; and
- 8 (2) total amount paid by the obligor in connection with the
- 9 covered loan.

10 SECTION 3. [EFFECTIVE JULY 1, 2003] **The provisions of**
11 **IC 24-4.8, as added by this act, are severable in the manner**
12 **provided by IC 1-1-1-8(b).**

13 SECTION 4. [EFFECTIVE JULY 1, 2003] **IC 24-4.8, as added by**
14 **this act, applies only to loans originated after December 31, 2003."**

15 Delete pages 6 through 21.

16 Renumber all SECTIONS consecutively.

(Reference is to HB 1655 as reprinted March 4, 2003.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 0.

Senator Paul, Chairperson